

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

LAUSTEVEION JOHNSON.

Case No. 2:19-cv-00232-MMD-NJK

5

Plaintiff.

ORDER

JO GENTRY, *et al.*,

Defendants.

I. SUMMARY

The Court previously granted in part and denied in part Defendants'¹ motion for summary judgment ("Summary Judgment Motion") (ECF No. 46 (denying ECF No. 32)). Before the Court is Defendants' motion for reconsideration ("Motion") (ECF No. 48) of this Court's order (the "Order").² For the reasons discussed below, the Court will deny the Motion.

II. LEGAL STANDARD

A motion to reconsider must set forth “some valid reason why the court should reconsider its prior decision” and set “forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision.” *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this Court “(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was

¹Defendants are James Dzurenda, Brian Williams, James Cox, and Michaela Garufalo.

²Plaintiff's response to the Motion is due October 26, 2020. Although Plaintiff has not yet responded, the Court is familiar with the issues raised and finds a response to be unnecessary. Accordingly, the Court denies Plaintiff's motion for extension of time to oppose the Motion (ECF No. 50) as moot.

1 manifestly unjust, or (3) if there is an intervening change in controlling law.” *Sch. Dist. No.*
 2 *1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). But “[a] motion for reconsideration
 3 is not an avenue to re-litigate the same issues and arguments upon which the court
 4 already has ruled.” *Brown v. Kinross Gold, U.S.A.*, 378 F. Supp. 2d 1280, 1288 (D. Nev.
 5 2005).

6 **III. DISCUSSION**

7 Defendants do not present the Court with newly discovered evidence or an
 8 intervening change in the law. Rather, Defendants simply argue that the Court committed
 9 a clear error in its Order. The Court is unpersuaded. Defendants largely repeat their prior
 10 arguments from the Summary Judgment Motion—in essence, Defendants merely seek
 11 another opportunity to persuade the Court of their original position. For this reason alone
 12 the Court may deny the Motion. See *Brown*, 378 F. Supp. at 1288. However, the Motion
 13 is also denied on the merits as explained below.

14 Defendants assert that the Court erred by finding Plaintiff has standing to challenge
 15 the conditions at Southern Desert Correctional Center (“SDCC”) because Plaintiff did not
 16 suffer any injury and his alleged future harms are speculative. (ECF No. 48 at 4-6.)³ But
 17 while Defendants argue that Plaintiff has not demonstrated that he faces any imminent
 18 harm from the alleged double celling,⁴ overcrowding, and lack of supervision, a prisoner
 19 seeking injunctive relief for unsafe conditions need not “await a tragic event such as an
 20 actual assault before obtaining relief.” *Farmer v. Brennan*, 511 U.S. 825, 845 (1994)

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22 ³Defendants also dispute the Court’s finding that Plaintiff’s Eighth Amendment
 23 rights regarding the bunk bed and the conditions of confinement were clearly established,
 24 arguing that the inquiry was not specific enough. (ECF No. 48 at 7-10.) Yet, it is clear
 25 “officials can be on notice that their conduct violates established law even in novel factual
 26 circumstances.” *Hope v. Pelzer*, 536 U.S. 730, 741 (2002); see also *Deorle v. Rutherford*,
 27 272 F.3d 1272, 1285-86 (9th Cir. 2001) (clarifying that qualified immunity does not require
 28 that a prior case prohibit the exact misconduct at issue in the case).

⁴Defendants also challenge Plaintiff’s statements that double celling and a lack of
 26 ventilation caused his cell to get hotter. (ECF No. 48 at 5.) The Court declines to consider
 27 these arguments as they are raised for the first time in the Motion. See *Hopkins v. Andaya*,
 28 958 F.2d 881, 889 n. 5 (9th Cir. 1992), *impliedly overruled on other grounds in Federman*
v. Cty. of Kern, 61 F. App’x 438, 440 (9th Cir. 2003).

1 (internal citations and quotation marks omitted); see also *Lemire v. Cal. Dept. of*
 2 *Corrections and Rehabilitation*, 726 F.3d 1062, 1076 (9th Cir. 2013) (stating that when
 3 establishing deliberate indifference to an inmate's safety, it does not matter "whether a
 4 prisoner faces an excessive risk for reasons personal to him or because all prisoners in
 5 his situation face such a risk") (quoting *Farmer* 511 U.S. at 843). Defendants also argue
 6 that Plaintiff does not have standing to challenge the fire safety system, as he has not
 7 demonstrated a certain or impending risk of a fire. (ECF No. 48 at 6.) However, "[p]risoners
 8 have the right not to be subjected to the unreasonable threat of injury or death by fire and
 9 need not wait until actual casualties occur in order to obtain relief from such conditions."
 10 *Hoptowit v. Spellman*, 753 F.2d 779, 784 (9th Cir. 1985).⁵ Defendants thus fail to show
 11 the Court clearly erred in its analysis of Plaintiff's conditions of confinement claims.

12 Defendants further contend the Court committed clear error by finding that allegedly
 13 "conclusory and self-serving" statements in Plaintiff's verified complaint and attached
 14 affidavit created a genuine issue of material fact regarding whether Plaintiff informed
 15 Defendants of the conditions at SDCC. (ECF No. 48 at 6-7.) Defendants point to *Gray v.*
 16 *Neven*, which held that a one-sentence allegation in an inmates' affidavit stating that a
 17 prison official threatened him did not create a genuine issue of material fact because the
 18 statement was only a "bare general allegation without more." (*Id.*); see also *Gray v. Neven*,
 19 Case No. 2:16-cv-01651-RFB-GWF, 2019 WL 690344, at *4 (D. Nev. Feb. 19, 2019).
 20 However, the Ninth Circuit reversed the district court on this issue and found that the
 21 statements in the plaintiff's verified complaint and affidavit created a genuine dispute of
 22 material fact. *Gray v. Neven*, 815 F. App'x. 214, 215 (9th Cir. 2020).⁶

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24 ⁵The Court does not reach the merits of Plaintiff's claim regarding SDCC's allegedly
 25 inadequate fire safety system because Defendants only challenge Plaintiff's standing to
 assert the claim and do not address the merits of the claim.

26 ⁶The Court is again troubled by Defendants' failure to acknowledge this reversal
 27 because the Nevada Attorney General's Office—who represent Defendants in this case—
 28 also represented the defendants in *Gray*. In fact, this Court recently accepted a Report
 and Recommendation that admonished counsel in the Nevada Attorney General's Office
 for failing to acknowledge that this argument was rejected by the Ninth Circuit in another
 (fn. cont...)

1 Defendants also argue it was clear error for the Court to decline to consider their
 2 qualified immunity arguments regarding Plaintiff's dental care. But it is not clear error for
 3 a district court to decline to consider arguments raised for the first time in a reply. *Zamani*
 4 *v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). In any event, Defendants are not entitled to
 5 qualified immunity on Plaintiff's Eighth Amendment claims involving dental care because
 6 it was clearly established at the time that a prison official acts with deliberate indifference
 7 if they are aware of an inmate's serious dental needs but refuse to provide treatment. See
 8 *Woods v. Carey*, 488 F. App'x. 194, 197 (9th Cir. 2012) (stating that it is "clearly
 9 established . . . that a prison official who delays the receipt of necessary dental treatment
 10 has violated the inmate's constitutional rights"); *Hunt v. Dental Dep't*, 865 F.2d 198, 200
 11 (9th Cir. 1989) (finding that an inmate sufficiently stated a deliberate indifference claim
 12 against prison officials who "were aware of his bleeding gums, breaking teeth and his
 13 inability to eat properly" but failed to take action).

14 Defendants additionally assert the Court erred because Plaintiff failed to establish
 15 that Defendants personally participated in his dental care under *Peralta v. Dillard*. There,
 16 the Ninth Circuit held that a plaintiff failed to establish personal participation by a defendant
 17 prison official who merely signed the plaintiff's appeal because the defendant was not a
 18 dentist and instead relied on staff dentists to determine a reasonable course of treatment.
 19 *Peralta v. Dillard*, 744 F.3d 1076, 1086 (9th Cir. 2014). But *Peralta* is distinguishable
 20 because Plaintiff here has provided evidence that he informed Defendants of his need for
 21 dental care. (See ECF No. 46 at 9-10.) Moreover, unlike the plaintiff in *Peralta* who
 22 received dental care—including x-rays, ibuprofen for pain relief, and medication for an
 23

24 case to which the Office was involved. See *Manley v. Rowley*, 847 F.3d 705, 710-711 (9th
 25 Cir. 2017) (finding that the district court erred by not considering the self-serving and
 26 uncorroborated statements of an inmate who was allegedly under the influence
 27 methamphetamine during the relevant events); see also *Augborne v. Filson*, Case No.
 28 3:17-cv-00393-MMD-CLB, 2020 WL 3868868, at *1 (D. Nev. July 8, 2020) (accepting
 report and recommendation of magistrate judge); *Augborne v. Filson*, Case No. 3:17-cv-
 00393-MMD-CLB, 2020 WL 5539800, at *5 n.4 (D. Nev. June 16, 2020) (describing the
 Nevada Attorney General's Office's conduct as "troubling" and "unacceptable").
 Defendants' counsel should exercise care in relying on cases that have been reversed on
 appeal.

1 infection—within months of his request, here Plaintiff has provided evidence that he was
2 not even placed on a list to be treated until years after he informed Defendants of his
3 dental issue. (*Id.*) Defendants thus fail to demonstrate that the Court erred in its analysis
4 of Plaintiff's Eighth Amendment claims involving dental care.

5 Accordingly, the Court denies Defendants' Motion as they have not demonstrated
6 that the Court committed clear error in the Order.

7 **IV. CONCLUSION**

8 The Court notes that the parties made several arguments and cited to several cases
9 not discussed above. The Court has reviewed these arguments and cases and determines
10 that they do not warrant discussion as they do not affect the outcome of the motions before
11 the Court.

12 It is therefore ordered that Defendants' motion for reconsideration (ECF No. 48) is
13 denied.

14 It is further ordered that Plaintiff's motion for extension of time (ECF No. 50) is
15 denied as moot.

16 It is further ordered that the Clerk of Court update Plaintiff's address to SDCC as
17 indicated in the motion for extension of time (ECF No. 50).

18 DATED THIS 23rd day of October 2020.

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22 MIRANDA M. DU
23 CHIEF UNITED STATES DISTRICT JUDGE
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